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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/567,844	02/10/2006	Manfred Kieser	MERCK-3135	7151

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EXAMINER

NILAND, PATRICK DENNIS

ART UNIT	PAPER NUMBER
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1796

MAIL DATE	DELIVERY MODE
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09/05/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/567,844	Applicant(s) KIESER ET AL.	
	Examiner Patrick D. Niland	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4,7-11,13-16 and 18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4, 7-11, 13-16, and 18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1. The amendment of 6/3/08 has been entered. Claims 1, 4, 7-11, 13-16, and 18 are pending.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 4, 7-11, 13-16, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Canadian Patent No. 2037603 Findley in combination with US Pat. No. 6451102 Hilder et al..

Findley discloses the instantly claimed inventions at the abstract which discloses pigment compositions of up to 90 wt. % pigment and carrier which can be ethylene vinyl acetate copolymer (page 4, lines 4-7), which falls within the scope of the at least partially polar carrier of the instant claims 1, 4, 7-11, 13-16, and 18, in small granules (abstract page 10, lines 15-25 particularly noting “powdered” of line 22) which falls within the scope of powdered form of the instant claims. The pellet melting point implies that of the instant claim 4. It can be generally seen that the carrier can be the same as or similar to the resin to be pigmented from page 2, lines 11-12. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the instantly claimed invention to use whatever resin is to be pigmented, including those of the instant claims, as the carrier resin of the cited prior art pigment/resin powders because nothing is as compatible with the resin to be pigmented as the resin itself. The stearamide wax falls within the scope of the additive and auxiliaries of claims 10 and 15 as do the items of page 6, lines 17-

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27. See particularly page 3, lines 12-20; and the entire document. Findley does not disclose the instantly claimed flake form effect pigments.

It would have been obvious to one of ordinary skill in the art at the time of the instantly claimed invention to use the instantly claimed flake form effect pigments as the pigments of Findley because they are well known for use in master batches as shown by Hilder (the entire disclosure), would have been expected to give their well known pigmenting effects to the final pigmented product, would have been expected to benefit from the color concentrate of Findley just as the pigments of Findley do, including undergoing less degradation because the lower processing temperatures are expected to degrade the pigments less particularly due to the friability of the resulting pellets (page 2, lines 19-34 and page 3, lines 1-10) and will mix with the final resin better as taught by Findley, and will give the compatibility improvements taught by Findley. It is of course within the ability of the ordinary skilled artisan to modify the granule/powder size of Findley to accommodate the flaked pigment sizes and to avoid damaging/crushing the flake pigment during processing. Adding the color concentrate to the final polymer is the process of the instant claim 16.

The argued difficulties described in Hilder for processing pearlescent pigments would have been expected to have been overcome with the methods and conventions described by Findley et al. throughout the entire document. They would not be able to clog and would flow readily where they were in the small powders of Findley as described in Findley. The examiner fails to see a difference in the function of the polar wax of Hilder and the polar EVA, which is often referred to as a wax, of Findley. The propriety of combining Hilder and Findley are clear from the above rejection and would have been clear to the ordinary skilled artisan as well as what

would have been expected from the above discussed combination of the references' teachings. See MPEP 2141, particularly the parts referring to KSR. The examiner does not agree that there is uncertainty in the choice of the polar copolymer with the instantly claimed pigments given the similarity in function of the polar wax and the fact that EVA is often referred to as wax in the art. Even without considering this, Findley encompasses pigments in general, including flakes. The forming of the flakes into particles with the resins of Findley eliminates the flake geometry which affects flow properties giving the benefits of Findley to the flakes of Hilder. It is not seen that polar verses non polar polymer gives any unexpected result, particularly considering the vast array of surface chemistries of pigments, properties of polymers not specified by the instant claims including but not limited to modulus, degree of polarity, molecular weight, viscosity, etc. which are expected to materially affect the properties of the above discussed particles and those of the instant claims. In other words, there is no showing of unexpected results that is commensurate in scope with the instant claims and the cited prior art. The instant claims encompass stearamide by "comprising" which is also present in claim 18 of the instant application. The applicant's arguments have been fully considered but are not persuasive for the above reasons and for the teachings of the cited prior art. This rejection is therefore maintained.

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick D. Niland whose telephone number is 571-272-1121. The examiner can normally be reached on Monday to Thursday from 10 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu, can be reached on 571-272-1114. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Patrick D Niland/
Primary Examiner
Art Unit 1796